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PATENT
2224-0142P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Yukiko NAKANISHI et al. Conf.: 6638
Appl. No.: 09/145,987 Group: 1623
Filed: September 3, 1998 Examiner: Everett WHITE
For: CELLULOSE ACETATE AND DOPE CONTAINING
THE SAME

**PETITION TO INVOKE THE SUPERVISORY AUTHORITY
OF THE COMMISSIONER**

Mail Stop PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

December 22, 2003

Sir:

This is a petition under 37 CFR 1.181 to invoke the supervisory authority of the Commissioner in a matter concerning the Patent Examining Operation.

The Examiner to whom this application is currently assigned, Everett White, has engaged in a pattern of behavior in connection with the examination of this application which leads Applicants to believe that said Examiner is not prepared to provide this application with a fair and efficient examination.

Accordingly, Applicants respectfully request that this application be withdrawn from the jurisdiction of Examiner White for all further prosecution.

A detailed listing of significant features of the examination of this application is attached. Applicants draw special attention to a few items on the list, as follows:

- In June of 2001, after having previously filed 5 responses to various rejections from Examiner White, Applicants filed a Brief on Appeal. Rather than allowing the BPAI to see and rule on his rejections – which he had had previously repeated many, many times in spite of detailed rebuttals by Applicants during the prosecution leading up to the Appeal – Examiner White reopened prosecution and set forth further rejections.
- In October of 2002, following an Advisory Action, Applicants filed an RCE. In December of 2002, after more than 4 years of vigorous prosecution by Applicants, Examiner White issued a Notice of Abandonment. This put Applicants to the delay and expense of filing a Petition to Withdraw the Notice of Abandonment. In Petitioner's experience, Examiners normally telephone attorneys to determine whether a response was filed before issuing a Notice of Abandonment.
- In April of 2003, Examiner White issued a Notice of Non-Responsive Amendment. Applicants were put to the delay and expense of filing another petition. Upon receiving the petition,

Examiner White decided that the response in question was not non-responsive, after all.

- In September of 2003, Applicants' representative conducted a personal interview with Examiners White and Wilson – at that point the 6th interview in this application. Examiners White and Wilson promised to carefully consider this application and to propose changes to the claims that would overcome the rejections of record. Despite repeated contacts from Applicants' representative in the subsequent weeks, on 14 November 2003 Examiner White issued yet another Final Rejection, without either proposing changes to the claims or providing Applicants' representative with a substantive discussion relating to the merits of the claims.

Applicants recognize that it is extremely unusual to remove an application from the jurisdiction of one Examiner and transfer it to another Examiner due to the manner in which the prosecution has been conducted. However, the pattern of ***repeated manifest lack of respect on the part of Examiner White for Applicants' right to an efficient prosecution*** justifies this extreme measure in the present situation.

If there are any questions regarding the above matters, please contact Applicants' representative, at the telephone number listed below.


Appl. No. 09/145,987


This Petition is accompanied by the required fee of \$130.00, as specified in 37 CFR 1.17(h).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Raymond C. Stewart, #21,066

RCS/RG 
2224-0142P

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Attachment: Prosecution outline (2 pages)

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PROSECUTION TIMELINE – SN 09/145,987

Application filed	September 1998	(5 years ago)
Rejected	February 1999	
Response filed	June 1999	
Rejected	October 1999	
Response filed	January 2000	
Telephone interview Examiner White	February 2000	1 st interview
Advisory Action	March 2000	
Telephone interview Examiner White	March 2000	2 nd interview
Response filed	April 2000	
Advisory Action	May 2000	
CPA filed	May 2000	CPA
Rejected	June 2000	
Response filed	September 2000	
Rejected	December 2000	
Response filed	March 2001	
Telephone interview Examiner White	March 2001	3 rd interview
Advisory Action	April 2001	
APPEAL BRIEF FILED	June 2001	Brief
Prosecution reopened Rejected	August 2001	
Personal interview Examiner White Examiner Geist	January 2002	4 th interview
Response filed	February 2002	
Rejected	May 2002	
Telephone interview Examiner White	September 2002	5 th interview
Response filed	September 2002	
Advisory Action	October 2002	
RCE filed	October 2002	RCE

Notice of Abandonment	December 2002	<i>(Why didn't White telephone to determine if application was abandoned?)</i>
Petition to withdraw	January 2003	
Decision	March 2003	
Notice of non-responsive Amendment	April 2003	non-responsive Amendment?
Petition to withdraw	April 2003	<i>(Amendment was responsive, after all!)</i>
Rejected	April 2003	
Current Amendment	27 August 2003	
Personal interview Examiner White Examiner Wilson	10 September 2003	6 th interview Examiners White and Wilson promised to study application and to propose changes to claims that would overcome rejections
Telephone call to White	17 September 2003	Examiner White indicated that he would contact me in early October
Telephone call to White	3 October 2003	Left message. No return call.
Telephone call to Wilson	23 October 2003	Complained about lack of progress on PTO proposed claim changes
Telephone call from White	24 October 2003	Examiner White indicated that he would get back to me with proposed claim changes within 2 weeks
Telephone call to Wilson	3 November 2003	Examiner Wilson indicated that "2 months from 27/08/03 Amendment date" means 15/11/03
Telephone call from White	4 November 2003	Examiner White indicated that so far he had not been able to think of any claim changes to propose, and promised to keep working on it
Final Rejection	14 November 2003	<i>(Without any further follow up to the course of action promised at the 10 September 2003 interview, yet another Final Rejection!)</i>